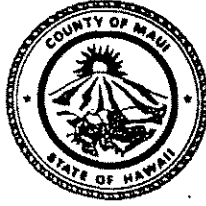


CHARMAINE TAVARES  
Mayor



BRIAN T. MOTO  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7740 FAX 270-7152

August 5, 2008

Public Utilities Commission  
State of Hawaii  
465 South King Street, Room 103  
Honolulu, Hawaii 96813

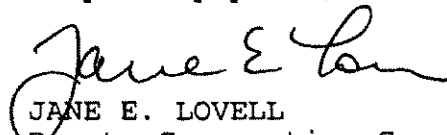
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2008 AUG -6 A 11:39  
PUBLIC UTILITIES  
COMMISSION

Re: In the Matter of Molokai Public Utilities, Inc.,  
Wai'ola O Moloka'i, Inc., and Mosco, Inc., For  
Temporary Rate Relief; Docket No. 2008-0115

Dear Commission:

In response to Commission Counsel Kaiulani Kidani Shinsato's letter of July 9, 2008, and the timetable discussed at the July 15, 2008 public hearing on Molokai requiring the parties to file a Statement of Position or Statement of Probable Entitlement on or before August 7, 2008, this is to advise that the County of Maui's position in this docket has not changed. County re-states and incorporates herein by reference its verified Response to Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Mosco, Inc., filed herein on June 24, 2008, a copy of which is attached for your convenience.

Very truly yours,

  
JANE E. LOVELL  
Deputy Corporation Counsel

JEL:lk

cc: Peter A. Nicholas  
Daniel Orodener, Esq.  
Catherine P. Awakuni, Executive Director,  
Division of Consumer Advocacy  
William W. Milks, Esq.

Enclosure

S:\ALL\JEL\Molokai Ranch PUC Rate Case\Correspondence\PUC.Position Statement.wpd

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of

MOLOKAI PUBLIC UTILITIES,  
INC., WAI'OLA O MOLOKA'I, INC.,  
and MOSCO, INC.

For Temporary Rate Relief.

Docket No. 2008-0115

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FILED  
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PUBLIC UTILITIES  
COMMISSION

COUNTY OF MAUI'S RESPONSE TO ORDER INSTITUTING A  
PROCEEDING TO PROVIDE TEMPORARY RATE RELIEF TO MOLOKAI  
PUBLIC UTILITIES, INC., WAI'OLA O MOLOKA'I, INC., AND MOSCO, INC.

VERIFICATION OF CHARMAINE TAVARES

EXHIBITS "A" TO "D"

CERTIFICATE OF SERVICE

FILED  
2008 JUN 24 P 1:17  
PUBLIC UTILITIES  
COMMISSION

DEPARTMENT OF THE CORPORATION COUNSEL

BRIAN T. MOTO 5421  
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Attorneys for COUNTY OF MAUI

**COUNTY OF MAUI'S RESPONSE TO ORDER INSTITUTING A  
PROCEEDING TO PROVIDE TEMPORARY RATE RELIEF TO MOLOKAI  
PUBLIC UTILITIES, INC., WAI`OLA O MOLOKA`I, INC., AND MOSCO, INC.**

Comes now, COUNTY OF MAUI, by and through its attorneys, BRIAN T. MOTO, Corporation Counsel, and JANE E. LOVELL, Deputy Corporation Counsel, and hereby responds to the June 16, 2008 Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai`ola O Moloka`i, Inc., and Mosco, Inc. (hereinafter "Order") issued by the Hawaii Public Utilities Commission (hereinafter "PUC"), as follows:

**I. INTRODUCTION**

In late March, 2008 Molokai Properties, Limited, dba Molokai Ranch (hereinafter "MPL") informed the PUC that it was planning to dispose of its subsidiaries, Molokai Public Utilities, Inc., Wai`ola O Moloka`i, Inc., and Mosco, Inc. (hereinafter collectively "Utilities"). On or about May 30, 2008, MPL unilaterally announced that its subsidiaries would cease all water and wastewater service to their 1,200 customers unless some public or private entity assumed the Utilities' operations.

The County is a customer of the Utilities and depends upon water service provided by the Utilities for, among other things, fire protection through fire hydrants along Kaluakoi Road, through Maunaloa town, and in the Kualapuu area. In addition, the County's Department of Parks and Recreation relies on the Utilities for water for the County's Papohaku Beach Park and for the County's Kualapuu Park. Thus, the County, along with the Utilities' other customers, will be irreparably harmed if MPL makes good on its

threat to unilaterally and abruptly shut down the Utilities' operations.

MPL's threat comes on the heels of massive layoffs of MPL employees, causing acute economic distress to the citizens and severe disruption to the economy of Molokai. Adding insult to injury, MPL appears to be seeking the PUC's assistance in foisting off MPL's liabilities onto the County, while nonetheless retaining all of its valuable assets.

The PUC should reject all such suggestions, and instead, use its statutory powers to compel MPL and its wholly-owned Utilities to comply with their legal obligations under HRS Chapter 269, the PUC's administrative rules, and the conditions of the Utilities' Certificates of Public Convenience and Necessity.

## II. DISCUSSION

### A. The County Has No Legal Duty To Bail Out Mismanaged Private Utilities

#### 1. The County Does Not Have A Legal Duty To Provide Utility Services

The PUC's Order instituting this proceeding is replete with suggestions that the County should bail out the Utilities (see Order, pp. 7, 9, 10, 13). However, the Order does not cite to any legal authority for the proposition that "it is the County's responsibility to ensure that its citizens have access to basic water and wastewater service." (Order, p. 10, quoting a June 13, 2008 letter from the PUC to the County.) While the situation may be different on Oahu, the County of Maui and other counties in the State do not, and cannot, provide utility services to all of their

citizens. There are a number of private utilities serving various parts of the County of Maui, and there are also numerous areas in the County of Maui where no utility service is provided at all. Moreover, the assumption that provision of utilities is "typically" a County function ignores the fact that in addition to the County of Maui, the State Department of Hawaiian Homelands and the State Department of Agriculture operate water and irrigation utilities on the Island of Molokai.

In any event, neither this Commission nor any other State agency has any legal basis for requiring the County to take over the operation of the Utilities. While the PUC has broad and, indeed, exclusive regulatory powers over the Utilities, see Citizens Utilities Company, Kauai Electric Division v. County of Kauai, 72 Haw. 286, 814 P.2d 398 (1991), the PUC has no legal authority to compel the taxpayers or ratepayers of the County of Maui to assume MPL's liabilities.

Thus, while the County supports the PUC's efforts to hold MPL and its wholly-owned Utilities accountable, and while the County is deeply concerned for the health and well-being of its citizens residing in the affected areas of Molokai, the County rejects outright the PUC's suggestion that the County "acquire" the Utilities. Instead, the County asks that the PUC use its regulatory and enforcement powers to prohibit the Utilities from ceasing operations, and to prevent MPL from transferring or disposing of utility assets without PUC approval. Should MPL continue to fail

to comply with the PUC's orders, monetary and criminal penalties should be assessed.

2. The State Legislature Has Determined That Regulation Of Utilities Is A State, Rather Than A County, Concern

In Citizens Utilities, supra, 72 Haw. at 288, the Hawaii Supreme Court noted that "[i]t is clear that the legislature intended to reserve with the PUC the regulatory powers over public utilities, which was a matter of statewide concern to the legislature. . . ." Citizens Utilities stands for the proposition that if the State Legislature did not give the counties specific authority to take over a function expressly given to the State, it is the State's responsibility, rather than the counties', to assure that utilities in Hawaii are run properly. See id., 72 Haw. at 289.

Moreover, under the public trust doctrine, the State, rather than the counties, has jurisdiction over the waters of the State. Article XI, section 7 of the Hawaii Constitution provides that "[t]he State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of the people." (Emphasis added) Moreover, in Groundwater Management Areas such as Molokai, "the public trust compels the state duly to consider the cumulative impact of existing and proposed diversions on trust purposes and to implement reasonable measures to mitigate this impact . . . ." In re Water Use Permit Applications, 94 Hawai'i 97, 143, 9 P.3d 409, 455 (2000) (citations omitted, emphasis added). Likewise, the State Water Code, HRS §§ 174C-2, 174C-4, and

174C-5, places responsibility for the State's waters squarely on the shoulders of the State and the State's regulatory agencies.

Thus, County does not have ultimate authority over privately-owned utilities such as the Utilities at issue in this docket. Likewise, the County does not have ultimate authority over the use and disposition of the waters of the State, such as the Utilities Well No. 17. Because the County lacks such powers, the County should not be deemed to have any corresponding legal duty to provide water or wastewater services to its citizens.

3. MPL Should Not Be Allowed To Shift Its Liabilities To The Taxpayers While Retaining Its Assets

MPL apparently considers the Utilities to be worthless, as MPL appears willing to abandon them. The County is informed and believes that the Utilities were not built to County standards, have been mismanaged for years, and have been allowed to deteriorate. The County cannot comment more precisely on the design, efficiency, or condition of the Utilities' infrastructure, because in response to the County's requests, MPL responded that a detailed description of its water system, including blueprints, drawings, and plans of MPL's Well 17, of the water treatment facility, and of the system's booster pumps was "not available."<sup>1</sup>

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<sup>1</sup> The County's initial requests for information were made by telephone on May 7, 2008, when Jeffrey Eng, the County's Director of the Department of Water Supply, requested assistance from Abbey Mayer, the Director of the State Office of Planning in acquiring the necessary documents and information about MPL's water system. Thereafter, on May 12, 2008, Eng also requested the same documents and information from Rex Kamakana at the Utilities. On May 30, 2008, Eng informed Mayer that no information had been received from the Utilities. Later the same day, Mayer advised Eng that Dan

Neither MPL nor any of its subsidiaries has filed for bankruptcy, to the County's knowledge. Moreover, MPL does not appear to be offering any of its assets to the entity that it expects to take over operation of the Utilities. Instead, MPL is seeking to divest itself of its substandard utility systems and associated legal obligations, while retaining all of its land and other valuable assets. Unlike cases in which a utility has declared bankruptcy, such as the bankruptcies of Timberon Water Company, Inc. (see Application of Timberon Water Co., Inc., 836 P.2d 73 (N.M. 1992); Pacific Gas & Electric Company (see In re Pacific Gas and Elec. Co., 263 B.R. 306 (Bkrtcy. ND. Cal. 2001); and Public Service Company of New Hampshire (see In re Public Service Co. of New Hampshire, 98 B.R. 120 (Bkrtcy D.N.H. 1989), the Utilities at issue here have not filed for bankruptcy protection, and their parent company appears to be solvent.

4. County Cannot Operate A Water System That Lacks Legal Sources Of Water

On May 13, 1992, the State's Commission on Water Resource Management ("CWRM") designated the entire island of Molokai as a Water Management Area.<sup>2</sup> As a consequence of designation, all users

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Orodenker, the General Counsel of MPL, stated that the requested documents were "not available." A more detailed (but not exhaustive) written list of information that the County would need to assess MPL's wastewater and water facilities is attached hereto as Exhibit "A".

<sup>2</sup> Pursuant to HAR § 6-61-48, the PUC is entitled to take official notice of the same matters that can be judicially noticed by the Hawaii State Courts. These include facts that are not reasonably subject to dispute because they are either generally known or capable of accurate determination by resort to sources



of groundwater were required to obtain Water Use Permits from CWRM.  
HRS § 174C-48.

On June 8, 1993, Moloka'i Irrigation System and Moloka'i Ranch submitted a joint application for a Water Use Permit for Well No. 17, in order to provide water service to the Kaluakoi Resort and Kualapuu Town. Ownership of the land underlying Well No. 17 was later transferred to Kukui (Molokai) Inc. ("KMI"). At the conclusion of contested case hearings and an appeal, the Hawaii Supreme Court remanded the proceedings to CWRM on December 26, 2007. In re Contested case Hearing on Water Use Permit Application Filed by Kukui (Molokai), Inc., 116 Hawai'i 481, 174 P.3d 320 (2007).

On remand to CWRM, MPL was required to provide certain information to CWRM and to comply with certain conditions. Pursuant to Minute Order Re: Status Conference ("CWRM Minute Order"), issued by CWRM on or about March 10, 2008, MPL was required to file a memorandum addressing, "at a minimum, the issues of water usage, including information regarding the current users of the water, the quantities currently being used, and whether waste is occurring" as support for MPL's request for an interim permit that would allow withdrawals of water from Well 17 while further consideration of the Water Use Permit Application for Well 17 was pending. CWRM's Minute Order also required MPL to demonstrate its compliance with the eight permit conditions

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whose accuracy cannot be questioned. Rule 201(b), Hawaii Rules of Evidence.

previously imposed by CWRM. MPL was required to provide this information no later than June 2, 2008. A copy of CWRM's Minute Order is attached hereto as Exhibit "B".

Instead of complying with CWRM's Minute Order, MPL wrote to CWRM on May 27, 2008, claiming Molokai Public Utilities "is essentially insolvent" and that "[a]s a result of this insolvency, we do not have the resources to pursue this very expensive remand proceeding." A true and correct copy of MPL's letter of May 27, 2008 to Laura Thielen, Chairperson and Ken Kawahara, Deputy Director of CWRM, is attached hereto as Exhibit "C".

To the County's knowledge and belief, the result of MPL's failure to comply with CWRM's Minute Order is that CWRM has not issued any kind of interim permit. Without a permit, neither MPL nor any of its subsidiaries have any legal right to pump water from Well 17. See In re Contested Case Hearing on Water Use Permit Application Filed by Kukui (Molokai), Inc., 116 Hawai'i 481, 174 P.3d 320 (2007); see generally § 174C-48 et seq. (Water Use Permits required in order to pump groundwater in a Groundwater Management Area).

County is also informed and believes that the State Department of Agriculture ("HDOA") advised MPL on April 9, 2008 that "[a]n environmental review, consisting of an environmental assessment and, if necessary, an environmental impact statement, is required before HDOA can enter into any new agreement for the rental of the excess space within the MIS transmission pipeline. It will be the responsibility of MPL or its successor to accomplish

and bear the cost for the environmental review. This requirement should be made known to any potential successor." A true and correct copy of the April 9, 2008 letter from HDOA to MPL is attached hereto as Exhibit "D". Thus, neither MPL nor any successor would be able to use the MIS transmission pipeline to deliver water from Well 17 to the Utilities' customers without first complying with HRS Chapter 343. To the County's knowledge, MPL has not complied by performing the required environmental review.

In the absence of a Water Use Permit for Well 17 and a legally-sufficient Environmental Assessment and Finding of No Significant Impact, or a full Environmental Impact Statement, for the use of the MIS pipeline, any entity taking over the operations of Molokai Public Utilities, Inc. and Wai`ola o Moloka`i, Inc. would find itself without a legal source of water and without a legal means of delivering water to its customers. The County should not be forced into a position where it is required to operate utilities that are not in compliance with the State Water Code and HRS Chapter 343.

**B. The Current Record Is Not Sufficient To Justify Rate Increases to MPL**

Although a rate increase may be warranted, particularly as part of a transition plan involving an entity other than MPL, County cannot determine at this time whether increased rates are justified. The County has not received proof (as opposed to MPL's

unsupported ipse dixit<sup>3</sup>) that the Utilities are "insolvent." County is not aware of any bankruptcy filings. County is informed and believes that the Utilities have not increased their rates since 1993. The County is not privy to MPL's business reasons for keeping its utility rates static for 15 years, nor does the County fully comprehend how the PUC could allow the Utilities to operate in the red for more than five years, as claimed by MPL in Exhibit "C". MPL has not only failed to provide the County with requested information concerning its utility systems; MPL has failed to fully respond to the PUC's June 5, 2008 request for "detailed information and documentation on the financial requirements of each of the Utilities to be self-sustaining and the impact on the Utilities' ratepayers."

The PUC informed MPL on June 5, 2008 that the PUC needed "more detailed information and documentation," and required MPL to "provide detailed documentation as to the revenue requirements for each utility, their expenses, and the likely resulting rates that will be required to ensure the continued provision of utility services." The PUC requested "all relevant information regarding the Utilities' operations and [the] plan for transitioning the Utilities to a third party or parties." The plan was to identify "all utility assets, ownership and valuation of the assets and the terms of any conveyance of those assets."

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<sup>3</sup> Cf. General Electric Co. v. Joiner, 522 U.S. 136, 146, 118 S.Ct. 512 (1997) (expert's opinion based only on his say-so or ipse dixit not sufficiently reliable to be admissible in evidence.)

The PUC gave MPL until June 12, 2008 to provide the required information. The sparse information provided in MPL's letter of June 11, 2008 was not responsive to each of the PUC's requests. Neither the PUC nor the Consumer Advocate should have to rely on the unsubstantiated assertions of MPL. Instead, the PUC should use its full investigatory and regulatory powers to compel MPL and its wholly-owned Utilities to comply with the PUC's June 5, 2008 information demand.

To date, MPL has failed and refused to provide information requested by CWRM, by the County, and by the PUC. Rather than cooperating in good faith, MPL seems determined to hinder any attempt to learn more about its Utilities and their operations.

Therefore, County repeats its previous requests that the PUC take the following steps without further delay:

1. Maintain in place the PUC's order requiring the Utilities to continue to provide utility services unless and until the PUC approves a transfer or surrender of their CPCNs to a public or private third party;
2. Immediately issue subpoenas or subpoenas duces tecum for the books, records, accounts, and witness testimony necessary for the PUC and the Consumer Advocate to determine whether rate increases are necessary and justified;
3. Investigate each of the Utilities and their respective operations, revenues, assets, practices, and services;
4. Require that the Utilities prepare and submit a plan for the continued operation of the Utilities beyond August 2008;

5. Review any information or plans of the Utilities for the transfer or other disposition of utility assets or operations; and
6. Disseminate information obtained through its investigation to the Utilities' customers and the public.

DATED: Wailuku, Maui, Hawaii, June 23, 2008.

BRIAN T. MOTO  
Corporation Counsel  
Attorneys for COUNTY OF MAUI


By: Jane E Lovell  
Jane E. Lovell  
Deputy Corporation Counsel

VERIFICATION OF CHARMAINE TAVARES

STATE OF HAWAII       )  
                              ) SS.  
COUNTY OF MAUI       )

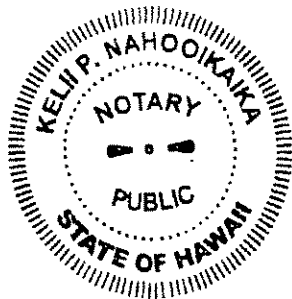
Charmaine Tavares, being first duly sworn, deposes and says:

That she is the duly-elected Mayor of the County of Maui; that she is authorized to verify this pleading; that she has read the foregoing pleading and knows the contents thereof; and that the contents thereof are true to the best of her knowledge, information, and belief.

  
Charmaine Tavares, Mayor  
County of Maui

Subscribed and sworn to before me this  
23rd day of June, 2008.

Kelii P. Nahooikaika    Kelii P. Nahooikaika  
Notary Public, State of Hawaii  
My commission expires: 4/30/2010



## **Wastewater system**

- Records of all properties connected to the sewer, including address of property, TMK, name and contact info of property owner.
- Documents disclosing the condition of the assets, past repairs along with maps, CCTV data, or other written documentation delineating the locations of all work done/not done and the extent of the defect or repair made or required.
- Complete permitting history, including records of any violations, fines, or enforcement actions.
- Documents concerning any current or pending litigation or legal issues regarding connections, permits, easements, payments owed, and the like.
- As-built plans (and GIS files if existing) for sewer lines, force mains, and related infrastructure.
- Operation manuals and as built construction drawings of all facilities.
- Detailed list of all assets and inventory, including the install dates of all equipment and vendor lists.
- Any agreements between MPL and property owners connected to the sewer system.
- Any compliance logs.
- Preventative Maintenance plans.
- Any projected replacement schedule.
- Manpower requirements to run the entire operation, including management, operators, mechanics, electricians, laboratory technicians, and so forth, along with an estimate of hours per week for each category.
- Yearly budgets for the past five years.

**EXHIBIT "A"**



## **Water system**

The same type of information requested for Wastewater, and also the following:

- List of all plant, property and equipment in service, including dates of acquisition, depreciation basis, depreciation taken to date.
- Description of the physical and operational condition of all plant and equipment in service.
- Customer information, billing records, number of accounts, number of meters, meter sizes.
- Water consumption data.
- Planned and proposed new services.
- All water quality data, both process control data and data reportable to DOH.
- Any water quality compliance issues and violations.
- All DOH-conducted Sanitary Surveys.
- All Consumer Confidence reports.
- All written communications with the PUC.
- Copies of PUC D&O's of all rate cases.
- Maps and descriptions of service areas per the CPCN.
- Information on Well 17, including pump type, pump capacity, well construction information, motor hp, motor and pump manufacturer, maintenance and repair records, blueprints, engineering report.
- Information on the Surface Water Treatment Facility, including type of treatment, capacity, operating manuals, influent and effluent water quality data, engineering report.

- Information on any booster pump stations, including pump type, motor hp, operating records, maintenance records, and the like.
- Information and maintenance records of storage tanks, reservoirs, head breaker tanks, pressure reducing valves, and the like.

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of the Contested Case Hearing on the Water Use Permit Application Filed by Kukui (Molokai), Inc.,	) Case No. CCH-MO-97-1 ) ) MINUTE ORDER RE: STATUS ) CONFERENCE; CERTIFICATE OF ) SERVICE
-----------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------

MINUTE ORDER RE: STATUS CONFERENCE

On March 3, 2008, a Status Conference was held in the Board of Land and Natural Resources' Conference Room. The Status Conference was attended by the Presiding Officer, Laura H. Thielen, via telephone; Linda Chow, Deputy Attorney General; Ken Kawahara, Deputy Director of the Commission on Water Resource Management; Kris Nakagawa, Esq. and Sandra Wilhide, Esq. representing the Applicants Molokai Public Utilities, Inc., Kaluakoi Water, LLC, and Molokai Properties Limited (hereinafter collectively referred to as "Molokai Properties")<sup>1</sup>; Alan Murakami, Esq. and Camille Kalama, Esq. representing Intervenors Judy Caparida and Georgina Kuahuia; Jon Van Dyke, Esq. representing Intervenor Office of Hawaiian Affairs; and Clayton L. Crowell, Esq. representing Intervenor Department of Hawaiian Home Lands (hereinafter collectively referred to as "Intervenors").

During the course of the status conference the parties discussed the procedure to address the Motion to Continue Water Withdrawals filed by Molokai Properties and the hearing on remand on Molokai Properties' Application for a Water Use Permit, as it may be amended, and the scope of the hearing on remand. Based on the oral and written statements presented by the parties and the discussion during the status conference, the following schedule and procedure

<sup>1</sup> The Applicants are also required to file a separate pleading setting forth who is the successor in interest to the permittee, Kukui (Molokai), Inc. that will be the applicant on the amended permit application.

shall be applicable in this matter:

**A. Motion to Continue Water Withdrawals**

1. Applicant Molokai Properties will file a supplemental memorandum to its Motion to Continue Water Withdrawals which should address, at a minimum, the issues of water usage, including information regarding the current users of the water, the quantities currently being used, and whether waste is occurring, and its compliance with the eight (8) permit conditions previously imposed by the Commission on Water Resource Management ("Commission") on Applicant's predecessor in interest. Molokai Properties' supplemental memorandum shall be due no later than **Monday, June 2, 2008**.

2. Intervenor shall file a response to the Motion to Continue Water Withdrawals and supplemental memorandum by no later than **Thursday, July 17, 2008**.

3. No reply memorandum will be allowed at this time. In the event Molokai Properties deems it necessary to file a reply memorandum, it may file an ex parte motion requesting leave to file a reply memorandum within five days of the filing of Intervenor's response. The Intervenor shall have five days to file a response to the motion.

4. Oral argument on the Motion to Continue Water Withdrawals may be set by the Commission upon further order.

**B. Scope of the Hearing on Remand**

1. Intervenor shall file memoranda regarding their respective position on the scope of the hearing on remand. Intervenor should not discuss the criteria for issuance of a water use permit under §174C-49, Hawaii Revised Statutes (HRS) as it is assumed that the scope of the

hearing will include those issues.

The Intervenor's memoranda should address, at a minimum, the issues raised in their Status Conference Statement including the relation of the permit application to the water transportation and delivery system (the Molokai Irrigation System or "MIS"), whether an environmental assessment pursuant to chapter 343, HRS, is required for the continued use of the MIS prior to holding the hearing on remand, and whether surface water permits must also be considered and issued in connection with the issuance of any ground water permit for water taken from Well #17. Intervenor's memorandum shall be due no later than **Friday, May 2, 2008**.

2. Applicants Molokai Properties shall file a response to Intervenor's memoranda regarding the scope of the hearing on remand no later than **Monday, June 16, 2008**.

3. No reply memorandum will be allowed at this time. In the event Intervenor's deem it necessary to file a reply memorandum, it may file an ex parte motion requesting leave to file a reply memorandum within five days of the filing of Molokai Properties' response. Molokai Properties shall have five days to file a response to the motion.

4. Oral argument on the Motion to Continue Water Withdrawals may be set by the Commission upon further order.

**C. Motion to Substitute Intervenor's**


If Intervenor's would like to pursue their request to add or substitute parties in the remand hearing, they will be required to file a separate motion and memorandum on this issue. This motion and memorandum will be at the same time as their memorandum regarding the scope of the hearing, **Friday, May 2, 2008**. Any response or opposition to this motion will be due no

later than Monday, June 16, 2008. Reply memoranda will be by leave of the Commission according to the procedure set forth above.

**D. Hearing on Remand**

The procedure regarding the further hearings on remand shall be decided pursuant to a further status conference once the above issues have been addressed by the Commission.

SO ORDERED this 16 day of March, 2008.

  
\_\_\_\_\_  
LAURA H. THIELEN  
Presiding Officer

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of the Contested Case Hearing ) Case No. CCH-MO-97-1  
on the Water Use Permit Application Filed by )  
Kukui (Molokai), Inc., ) CERTIFICATE OF SERVICE  
)  
)  
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and accurate copy of the foregoing document was duly served upon the following parties by U.S. First-class mail:

**ALAN MURAKAMI, ESQ.**  
**MOSES K.N. HAIA, III, ESQ.**  
Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, Hawaii 96813

Attorney for Appellants Judy Caparida and Georgina Kuahuia

**JON M. VAN DYKE, ESQ.**  
2515 Dole Street  
Honolulu, Hawaii 96822

Attorney for Office of Hawaiian Affairs

**KENT MORIHARA, ESQ.**  
**KRIS NAKAGAWA, ESQ.**  
841 Bishop Street, Suite 400  
Honolulu, Hawaii 96813

Attorneys for Kalua Koi Land, LLC

CLAYTON LEE CROWELL, ESQ.

465 S. King Street, Suite B-2  
Honolulu, Hawaii 96813

Attorney for Department of Hawaiian Home Lands

DATED: Honolulu, Hawaii, March 10, 2008

Kathleen Oshiro

KATHLEEN OSHIRO

Secretary

Commission on Water Resource Management





RECEIVED

May 27, 2008

08 MAY 28 09:11

Ms. Laura Thielen, Chairperson  
 Mr. Ken Kawahara, Deputy Director  
 Commission on Water Resource Management  
 P. O. Box 621  
 Honolulu, Hawaii 96809

COMMERCIAL TRAVEL  
 RECEPTION

Date	6/16/08	Pages	2
From	CWRM		
To			
Phone	587.0234		
Post-It Fax Note	7671		
THIEN-LENG			
Co./Dept.			
Phone			

Re: CCH-MO-97-1: Kukul (Molokai), Inc. Remand Proceedings

Dear Chairperson Thielen and Mr. Kawahara:

This letter is to inform you that Molokai Public Utilities (MPU) does not intend to continue to pursue this case on remand. As has been discussed with staff and the PUC, MPU has been operating at a significant loss for several years and is essentially insolvent.

Losses Incurred Include:

	Operating Loss	Net Loss
FY 2003	\$223,000	\$227,000
FY 2004	\$ 38,000	\$41,000
FY 2005	\$101,000	\$184,000
FY 2006	\$214,000	\$337,000
FY 2007	\$470,000	\$607,000
YTD April 2008	\$427,000	\$546,000

As a result of this insolvency we do not have the resources to pursue this very expensive remand proceeding. In addition, as a result of Molokai Properties Limited's decision to shut down operations, Molokai Properties Limited and its subsidiaries are only very minor users of water.

We are actively seeking a new owner for MPU that will have the resources to continue operation and hopefully, they will be capable of resolving this matter. However, as previously stated, we cannot actively pursue this matter before the Commission.

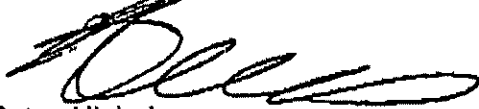
Molokai Properties Limited dba Molokai Ranch • 745 Fort Street Mall • Suite 600 • Honolulu, Hawaii 96813 •  
 Telephone 808.531.0158 • Facsimile 808.521.2279

EXHIBIT "C"

RECEIVED  
 CORPORATION COUNSEL  
 2008 JUN 16 AM 7:55

If you have any questions you contact our attorney, Yvonne Izu at 526-2888.

Very Truly Yours,



Peter Nicholas

Cc: Linda Chow, Deputy Attorney General  
Lee Crowell, Deputy Attorney General (DHHL)  
Alan Murakami, NHLC  
Jon Van Dyke (OHA)  
Moriwara Lau & Fong

LINDA LINGLE  
Governor

**COPY**

SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

April 9, 2008

Mr. Peter Nicholas  
President & Chief Executive Officer  
Molokai Properties Limited  
745 Fort Street, Suite 600  
Honolulu, HI 96813

Mr. Daniel Orodener  
General Manager Land-General Counsel  
Molokai Properties Limited  
745 Fort Street, Suite 600  
Honolulu, HI 96813

Dear Messrs. Nicholas and Orodener:

Re: Interim Use of the MIS Transmission Pipeline

In light of your recent shut down of operations, the Hawaii Department of Agriculture (HDOA) will allow Molokai Properties Limited (MPL) to continue use of the Molokai Irrigation System (MIS) transmission pipeline on a month-to-month basis under the terms and conditions in effect as of April 30, 2006. Those terms and conditions include payment of an annual rent of \$136,500, not \$135,000, as erroneously stated in your letter of April 1, 2008. We will review the situation again prior to June 30, 2008.

We understand that you are exploring options for transferring the responsibility for your water systems. An environmental review, consisting of an environmental assessment and, if necessary, an environmental impact statement, is required before HDOA can enter into any new agreement for the rental of the excess space within the MIS transmission pipeline. It will be the responsibility of MPL or its successor to accomplish and bear the cost for the environmental review. This requirement should be made known to any potential successor.

We would also appreciate knowing your plans regarding your Well 17 and Mountain Water System connections to the MIS.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Lee Kunimoto".

Sandra Lee Kunimoto, Chairperson  
Board of Agriculture

EXHIBIT D

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of

MOLOKAI PUBLIC UTILITIES,  
INC., WAI'OLA O MOLOKA'I, INC.,  
and MOSCO, INC.

For Temporary Rate Relief.

Docket No. 2008-0115

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served upon the following by First Class Mail, by depositing copies bearing sufficient postage with the U.S. Post Office, addressed as follows:

Peter A. Nicholas, Director  
Daniel Orodener, General Counsel  
MOLOKAI PUBLIC UTILITIES, INC.  
WAI'OLA O MOLOKA'I, INC.  
MOSCO, INC.  
MOLOKAI PROPERTIES LIMITED  
745 Fort Street, Suite 600  
Honolulu, Hawaii 96813

Catherine P. Awakuni  
Executive Director  
CONSUMER ADVOCATE  
Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs  
P. O. Box 541  
Honolulu, HI 96809

DATED: Wailuku, Maui, Hawaii, June 23, 2008.

BRIAN T. MOTO  
Corporation Counsel  
Attorneys for COUNTY OF MAUI

By:

  
Jane E. Lovell  
Deputy Corporation Counsel